

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF NEW YORK**

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**FRANK McCLELLAN,**  
**Plaintiff,**

**-against-**

**NOTICE OF**  
**CROSS-MOTION**

**CITY OF RENSSELAER, and,**  
**STEVEN SMITH, Individually and in**  
**his official capacity as Police Officer**  
**of the City of Rensselaer,**

**02-CV-1141**  
**GLS/DRH**

**Defendants.**

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**PLEASE TAKE NOTICE**, that upon the affidavits of Lee Greenstein, Esq., Frank McClellan and Michelle Cristo, and accompanying Memorandum of Law, and the exhibits 1 through 27 annexed hereto, as well as the pleadings and proceedings heretofore had herein, FRANK MCCLELLAN will move this Court before the Honorable Joseph M. Hood, a visiting District Court Judge for the United States District Court for the Northern District of New York, at a regularly scheduled motion term thereof to be held at the U.S. District Court House in Albany, New York, on the \_\_\_\_ day of \_\_\_\_\_, 2004, for an Order:

- (1) Granting summary judgment with respect to a determination that Defendant is not entitled to qualified immunity, as a matter of law;
- (2) Granting summary judgment with respect to a determination that defendant is liable for the false arrest and malicious prosecution of Plaintiff on the arrest and prosecution for disorderly conduct (PL. 240.20[7]).
- (3) Denying the motion for summary judgment submitted by Defendant Steven Smith in all respects;
- (4) Granting such other and further relief as to his court may deem just and proper.

Dated: Albany, NY  
July 12, 2004

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LEE GREENSTEIN  
Bar Roll #101859  
Counsel for Defendant Whitley  
600 Broadway  
Albany, NY 12207

TO: The Mills Law Firm  
Counsel for defendant Smith

Clerk  
U.S. District Court